

COUNTY OF KAUAI
Special Meeting Minutes
OPEN SESSION

Approved

Board/Commission	Kaua'i Fire Commission	Meeting Date	November 19, 2019
Location	Mo'iheha Building – Meeting Room 2A/B	Start of Meeting: 2:06 p.m.	End of Meeting: 3:30 p.m.
Present	Chair Chad Pacheco; Vice Chair Linda Kaauwai-Iwamoto; Commissioners: Jen Chahanovich, Alfredo Garces Jr., Michael Martinez, Alfred Levinthol and Thomas Nizo. Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Administrator Ellen Ching; Office of the County Attorney: First Deputy County Attorney Nicolas R. Courson; Human Resource Department: Acting Director of Human Resources Janine Rapozo; Kaua'i Fire Department: Deputy Fire Chief Kilipaki Vaughan and Battalion Chief Solomon Kanoho.		
Excused	Commissioner Alfred Levinthol		

BUSINESS	DISCUSSION	ACTION
Call To Order		With six (6) Commissioners present, Chair Pacheco called the Special Meeting to order.
KFC 2019-13	<p><u>Presentation by Permitted Interaction Group No. 3 on its recommendations for essay questions for the Fire Chief candidates. (Deferred on 8/12/2019, 09/3/19, 09/16/19 and 10/7/19)</u></p> <p>Mr. Martinez presented the Group's recommendations for the Commission to consider on questions they would be using for the essay phase of the hiring process. Chair Pacheco thanked Mr. Martinez for his presentation. He indicated that the deliberation and decision-making on the Group's recommendations must be done the Commission's meeting on December 2, 2019. With no further discussion, Chair Pacheco moved on to the next item.</p>	
KFC 2019-14	<u>Briefing by Acting Human Resource Director Janine Rapozo regarding general concerns about the impact of anticipated vacancies on the leadership of the Kaua'i Fire Department.</u>	

Ms. Rapozo referred the Commissioner's to two handouts that she distributed earlier. (On file with the Office Boards and Commissions). She explained that the first handout reflects the Fire Department's organizational chart and her second handout reflects the Department's current management structure, a management structure as of December 31, 2019 (after Assistant Chief Scovel retires) and KFD's management structure if Deputy Fire Chief Kilipaki Vaughan exercises his return rights to Lieutenant or otherwise, as well two possible structure options for the Commissioners to consider.

She further explained that if the Deputy Fire Chief Vaughan was to return to his prior position as a lieutenant, the top level positions (chief, deputy chief and assistant chief) in the Fire Department would be vacant, and if that happens she suggested that the Commission should appoint an acting fire chief (internal or external) in the interim prior to the Commission's selection of a new Fire Chief. She noted that once the Commission appoints an acting fire chief he will have the discretion to appoint an interim deputy fire chief and he will have the discretion to temporarily assign a fire fighter to the assistant fire chief position.

Mr. Martinez asked when Commissioners will know if Deputy Fire Chief Vaughan will be returning to back to his prior position as a lieutenant to which Ms. Rapozo replied it can happen at any time and that the Commission does not need to wait until Deputy Chief Vaughan makes a decision.

With no further discussion, Chair Pacheco asked if there was any person in the audience who wish to testify on the agenda time.

Solomon Kanoho, Battalion Fire Chief at the Kaua'i Fire Department asked if Deputy Fire Chief Vaughan was to return back to his prior lieutenant position or gets promoted to Fire Captain and at the same time the Commission decides to appoint an acting fire chief can the Deputy still remain in his new position as a Fire Captain be appointed by the Commission as the Acting Chief and still retain his captain position. Ms. Rapozo stated that the decision is for the Commission to make.

Fire Deputy County Attorney Courson asked when someone is promoted if timing was an issue because they must serve six (6) months in that position in order to get return rights to which BC Kanoho replied yes, and stated that timing an issue because the person would have be on a six (6) month probationary period before they're given a promotion.

Mr. Courson indicated that the Office of the County Attorney have always taken a position that there is no such thing as an acting positon because the office felt that the term was used to telegraph an intent so it doesn't look like there's an massive turnover and to keep the public from thinking something weird was happening when someone steps down from a position.

Ms. Rapozo clarified further that when a person goes to an appointed person and takes a leave from their current civil service person it has to be from their last held permanent position. In DC Vaughan's case, if he does not complete his six (6) month probationary period as a fire captain he would have to return back to his last held permanent position as a lieutenant.

Mr. Courson pointed out that because the Commission is speaking about D/C Vaughan the Commission could move its discussion into executive session, unless D/C Vaughan wants the discussion to continue in open session. He explained that when talking about a position in general, the Commission could have the discussion in open, but if it's about a particular individual it will be up to the individual to have the discussion in open or in a closed session.

B/C Kanoho stated that if D/C Vaughan is not able to complete his six (6) month probationary period as a fire captain he would have to go back to his lieutenant positon. Mr. Courson explained that he raised the question because there seems to be a disincentive to think that if D/C Vaughan is promoted to fire captain that the Commission could immediately ask him to be the acting fire chief but if he took the position, he would probably have to forfeit the captaincy position that he just got promoted to.

B/C Kanoho stated although he doesn't think he qualifies for the Fire Chief's position he's willing to step up to the plate until the Fire Commission hires a new Fire Chief for the Kaua'i Fire Department. Mr. Martinez thanked B/C Kanoho for his willingness to step up to job, then asked him if he still plans to retire at the end of the 2020 to which B/C Kanoho replied yes, but it all depends on who the next Fire Chief will be. He added that there are some extenuating circumstances where he could potentially stay for an additional two or three more years and that his offer to fill in the Fire Chief's position depends on what HR says about the battalion chiefs moving into a temporarily assigned assistant chief position.

Ms. Rapozo stated that the Fire Commission has the authority to appoint anyone internal or external to be the interim fire chief until the Commission hires a new Fire Chief.

Chair Pacheco called on Deputy Fire Chief Vaughan to share his thoughts on the matter.

Deputy Fire Chief Vaughan stated that the nuisances of the civil service rules are a little crazy which resonated from last year when he was in a position to be promoted to a fire captain, but declined because he decided to remain as the Deputy Fire Chief to maintain consistency throughout the year. He noted that return rights are granted to only civil service personnel and his return rights is good until December 4, 2019. He shared that in the life everyone needs options and for him having options are important for obvious reasons because he has carried the ball for the Kaua'i Fire Department since December of last year with the help of Assistant Fire Chief Mike Scovel and the Battalion Chiefs. He shared that it's not a secret that he had applied for the Fire Chief's position and would love to become the next Fire Chief for the Kaua'i Fire Department, but the nuisances of civil service has put him in a position where he has multiple options. It holds well that the Commission has navigated through the hiring process and mostly likely he will be involved in the process if he's selected for further consideration. He noted that for most firefighters retirement usually happens at the twenty year mark and for the new hires retirement happens at the thirty year mark, but for him he still has another good ten (10) years with the Kaua'i Fire Department.

	<p>Mr. Nizo asked if now would be the appropriate time to ask Deputy Fire Chief what his plans are at this juncture. Mr. Courson suggested that the Commission do an unanticipated executive session because it would be unfair for the Deputy to have him answer the question in open session.</p> <p>Chair Pacheco announced that he would be calling a five minute recess to allow Ms. Ching to consult with Mr. Courson on legalities. The Commissioners agreed.</p> <p>At 2:20 p.m. Chair Pacheco called for a five minute recess. At 2:27 p.m. Chair Pacheco called the meeting back to order.</p> <p>Chair Pacheco asked the Commissioners if they had additional questions for Ms. Rapozo regarding the information contained in her handouts. Hearing none. Chair Pacheco called for a motion to receive the handouts for the record.</p> <p>Mr. Courson explained to the Commissioners about the parameters of going into an unanticipated Executive Session which in this case is to allow the Commissioners to convey with Battalion Chief Solomon Kanoho and Deputy Fire Chief Vaughan where matters affecting their privacy will be involved. He then cited the following Hawai'i Revised Statutes to take the meeting into Executive Session.</p> <p>Pursuant to Hawai'i Revised Statutes, ("H.R.S.") §92-7(a), the Commission may, when deemed necessary, hold an Executive Session on any agenda item without written public notice if the Executive Session was not anticipated in advance. Any such Executive Session shall be held pursuant to H.R.S. §92-4 and §92-9 and shall be limited to those items described in H.R.S. §92-5(a). Discussions held in Executive Session are closed to the public.</p> <p>Pursuant to Hawai'i Revised Statutes 92-5 (a) and (4), the purpose of this Executive Session is for the Commission to review and discuss the hiring or charges brought against employee in the Kaua'i Fire Department, where consideration of matters affecting privacy will be involved, provided that if the individual requests an open meeting, an open meeting shall be held; and to consult with its attorney on issues</p>	<p><u>Motion No. 1</u> Mr. Nizo moved to receive the two (2) handouts from Ms. Rapozo. Vice Chair Iwamoto seconded the motion. The motion carried 7:0.</p>
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	<p>pertaining to the Commission's powers, duties, privileges, immunities, and or liabilities. Chair Pacheco Deputy Fire Vaughan and Battalion Chief Kanoho if they would like to go into Executive Session to discuss the direction they going to take to which both gentlemen agreed. With no further discussion, Chair Pacheco called for a motion to enter into Executive Session. At 2:35 p.m. the Commissioners entered into Executive Session.</p>	<p><u>Motion No. 2</u> Mr. Nizo moved to enter into unanticipated Executive Session relating to item KFC 2019-14. Mr. Martinez seconded the motion. The motion carried 7:0.</p> <p>At 2:29 p.m. the Commissioners entered into Executive Session.</p>
<p>Return to Open Session – Continuation on item KFC 2019-14</p>	<p>At 2:37 p.m. the Commissioners reconvened in Open Session.</p> <p>Mr. Courson stated for the record that the Commissioners was briefed on the legalities relating to privacy concerns and so the next step is for the Commission decide what direction is wants to take based on the information received by Ms. Rapozo and B/C Kanoho's proposal to step up into a temporary assignment as the Acting Interim Fire Chief until the Commission hires a new Fire Chief or do nothing at all.</p> <p>Chair Pacheco called for a motion to begin the discussion.</p> <p><u>Discussion</u> Mr. Martinez asked if B/C Kanoho decided to step in and be the Interim Acting Fire Chief would he be able to submit a resume for the Fire Chief's position to which Chair Pacheco replied no because the application process is no longer open, but after the Commission hires a new Fire Chief he should be able to return to his Battalion Chief position.</p> <p>Mr. Courson asked Ms. Rapozo if B/C Kanoho would need to have his return rights approved by the Mayor for taking a leave of absence to TA as the Fire Chief to which Ms. Rapozo replied no because he has already invested years as a Battalion Chief and he's not going anywhere and that the only issue see can she is if B/C Kanoho is contemplating pay. Mr. Courson stated that if B/C Kanoho is going to retain his B/C pay, then the precedence HR sets is not a new precedent and he'll be able to keep all of his rights to overtime etc.</p>	<p>Mr. Nizo moved that based on management structure number three which describes the vacancies in the Chief, Deputy Chief and Assistant Chief positions that the Commission appoints B/C Kanoho as the Interim Acting Fire Chief for the Kaua'i Fire Department until the Commission hires a new Fire Chief. Mr. Martinez seconded the motion.</p>

	<p>Ms. Ching stated that being the Commission's next meeting is set for December 2, 2019 she suggested that the Commission go ahead with its motion and in the interim have Ms. Rapozo contact B/C Kanoho to get the details in terms of the conditions and if he's willing to accept the position and report back to the Commission on her findings at the Commission's December 2, 2019 meeting.</p> <p>Mr. Nizo asked if he should withdraw his motion to which Chair Pacheco replied yes and that he should rephrase the motion based on Ms. Ching's comment.</p> <p>Mr. Courson stated that the motion as stated by Mr. Nizo is fine, but if Ms. Rapozo's findings reveals another situation the motion would need to be modified at the Commission's December 2nd meeting.</p> <p>Ms. Omo asked if the item should be placed on another meeting agenda to allow the public to testify since the motion to appoint B/C Kanoho was not described specifically on the current agenda. Mr. Courson stated that Ms. Omo raised a good question because he was thinking about it himself being that the Commission is on a fine line and that the agenda item is to receive a briefing by the Acting Human Resource Director Janine Rapozo regarding general concerns about the impact of anticipated vacancies on the leadership of the Kaua'i Fire Department. As it is now the discussion jumped from a briefing to the Commission making a specific action and in light of Ms. Ching's suggestion that the Commission comes up with a contingency plan he would prefer having that specific item on the Commission's December agenda. But if the Commission feels strongly about making the motion he could live with doing that now because the fact of the matter is if someone was to disagreed with the motion the Commission could remedy it by putting the item on the next agenda for ratification.</p> <p>Mr. Nizo stated that since the Commissioners were dragged into having to hold a special meeting the Commission should make a decision today, then the Commissioners could ratify the decision at the Commission's December 2nd meeting, which he will not be able attend.</p>	
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	<p>Ms. Rapozo commented that it's important for the Commission to repost the item because she's unsure whether the other Battalion Chiefs would be interested in the position, but based on B/C Kanoho's testimony she doesn't think so. Another thing is if the Commission is going to appoint an Interim Acting Fire Chief there may be other qualified people out there who might want to come forward as well. She pointed out that the Fire Department is not going to get to the point of not having leadership because Assistant Fire Chief Mike Scovel will still be in his position for the entire month of December.</p> <p>Chair Pacheco asked if A/C Scovel is still planning to retire at the end of December 2019 to which Ms. Rapozo replied yes, and noted that more likely than not the promotions are not going to take place before he retires because of budgetary concerns, which is going to delay the promotions even further.</p> <p>Mr. Nizo stated that he would like to withdraw his motion to which Mr. Martinez seconded. With no further discussion, Ms. Ching cited the Hawai'i Revised Statutes to take the meeting into Executive Session.</p>	
<p>Executive Session KFC 2019-008</p>	<p><u>Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Permitted Interaction Group to present a list of candidates whom they recommend moving forward in the hiring process, and to discuss the individual candidates qualifications' where consideration of matters affecting privacy will be involved. The further purpose of this Executive Session to consult with the Commission's legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities as they may relate to this agenda item. (On-going)</u></p> <p>Chair Pacheco called for a motion to enter into Executive Session.</p>	<p>Mr. Nizo moved to enter in Executive Session. Mr. Martinez seconded the motion. The motion carried 6:0.</p> <p>At 3:08 p.m. the Commissioners entered into Executive Session</p>
<p>Return to Open Session</p>	<p>At 3:30 p.m. the Commissioners reconvened in Open Session. Chair Pacheco called for a motion to adjourn the meeting.</p>	<p>ES KFC 2019-008: The Group presented its recommendations on a list of candidates whom they recommended to move forward to the essay phase of the hiring</p>

		process.
Adjourned	With no further business to conduct, Chair Pacheco called for a motion to adjourn the Fire Commission's Special Meeting.	Mr. Nizo moved to adjourn. Ms. Chahanovich seconded the motion. The motion carried 6:0. At 3:30 p.m. the meeting adjourned.

Submitted by: _____
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: _____
Alfredo Garces Jr., Chair-Elect

(x) Approved as circulated on January 6, 2020

() Approved as amended. See minutes of _____ meeting.